THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.25810 OF 2005

DATED:3.3.2006

Between:

O. Srinivasa Rao

…Petitioner

And

The Municipal Corporation of Guntur,

Guntur, rep. by its Commissioner

…Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.25810 OF 2005

ORDER:

The petitioner is Class-I contractor. On 12.8.2004 he was awarded contract for construction of fish and mutton market (the market, for brevity) consisting of cellar, ground floor and first floor block. As per the terms of the contract entered into between petitioner and respondent Corporation he has to complete the work by 17.2.2005. He alleges that due to inspection by vigilance, he was forced to stop the construction of the work as ordered by the vigilance staff. According to him, he was not allowed to complete the work. The respondent issued fresh tender notice on e-platform calling for fresh tenders. Aggrieved by the same, petitioner filed the instant writ petition seeking invalidation of the action of the respondent Corporation in calling for fresh tenders. According to the petitioner, the contract entered into

between petitioner and respondent is still subsisting and therefore the respondent acted arbitrarily.

A counter affidavit is filed denying the petition averments. It is stated that as the petitioner did not complete the work before 17.2.2005, the respondent issued three notices, and thereafter a letter dt.15.11.2005 was issued informing that the work was terminated, and that fresh tenders will be called for balance of the work. It is also pointed out in the counter affidavit that the Vigilance Cell Inspector inspected the works on 16.10.2005 long after due date and therefore it has no relevance for not completing the work in stipulated time.

The petitioner filed a reply affidavit stating that the Court of III Additional District Judge, Guntur, issued an order of attachment in I.A.No.673 of 2005 dt.8.6.2005 attaching a sum of Rs.26,00,000/- (Rupees twenty six lakhs only) with the respondent payable to the petitioner and for this reason the petitioner did not complete the work.

The learned counsel for the petitioner submits that the termination of the contract was without notice and therefore it is unsustainable. This cannot be accepted. The affidavit of the petitioner is silent regarding the termination of the contract. This only shows that the petitioner has approached this Court without disclosing correct facts. Secondly, the contract is terminated after issuing notice. There is no reason to disbelieve the statement made in the counter affidavit of the respondent. Lastly, if the petitioner alleges breach of contract on the part of the respondent in terminating the contract, his remedy lies in filing suit for damages and in this Writ Petition, the relief as prayed cannot be granted.

The Writ Petition is accordingly dismissed.

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(V.V.S.RAO, J)

3.3.2006

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